STATE OF MICHIGAN

SUPREME COURT

CITY OF HIGHLAND PARK, a municipal corporation, NATHAN SIMONS and SEYMOUR SIMONS, Testamentary Trustees of the Estate of D. W. Simons, Deceased, KENNETH M. KEEFE, ERNEST E. QUANTRELL and PELHAM C. WILMERDING, Relators, v. EARL L. CLARK, Drain Commissioner of Oakland County, and BOARD OF SUPERVISORS OF OAKLAND COUNTY, Respondents.	No. 41,690.

MOTION FOR REHEARING

Now come relators and move the court to grant a rehearing in the above entitled cause for the following reasons:

1. The court attached erroneous significance to the fact that the proceedings and bonds denominated the improvement a storm sewer drain, which could only have resulted from a misconception of the meaning of the term "storm sewer," which is a purely land drainage facility.

2. The court erroneously concluded that it was bound by *Village of Oak Park v. Van Wagoner,* 271 Mich. 450, it being clear from the opinion in that case and the

record on which it came to this court, that the point involved in this court was not whether the method of construction of the improvement caused it to be outside the drain commissioner's jurisdiction, but whether with that fact assumed, the Village could attack collaterally the legality of taxes against it.

3. The court failed to consider the vital difference between the issue raised in *Village of Oak Park v. Van Wagoner (supra)* and this case, the former being an issue between a taxpayer and taxing officers. In such issue no consideration was given to the rights of bondholders, since they were not parties to the case, and the facts presented to the court were insufficient to show their rights.

4. The court, under the *stare decisis* rule, should have applied the reasoning in *Hankinson v. Deake,* 265 Mich. 1, *Village of Clawson v. Van Wagoner,* 268 Mich. 148, *Kennedy v. Dingman,* 272 Mich. 24, and *Detroit Trust Co. v. Dingman,* 291 Mich. 170, to this case, all of which hold that an improvement built as the one here involved is a legal drain, and within the drain commissioner's jurisdiction.

5. The court, in the opinions herein, appears to erroneously interpret accepted rules of long standing, and previously held in this state, whereby a municipality is estopped as against *bona fide* holders of its bonds to deny the truth of recitals therein.

6. The opinions fail to deal with the proposition adequately presented by relators that collateral attack upon the legality of the improvement and taxes therefor is barred by the statute, with its interpretations prevailing when the bonds were issued, and that relators are entitled to have the same interpretation apply now, notwithstanding intervening contrary interpretations.

This motion is based upon the record in this case, the briefs previously filed, and the attached brief. We certify that it is not presented for purposes of delay, but to obtain a decision honestly believed to be just and in accordance with the laws.

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BRIEF IN SUPPORT OF MOTION FOR REHEARING

We earnestly request the court to grant a rehearing, in order that certain erroneous conceptions disclosed by the two opinions in this case can be corrected. The importance of the case is such that these ought not to go unchallenged. Because of the inadequate time permitted for oral argument, we were unable to fully present the issues, and believe that numerous points may not be fully understood. We believe that an oral argument which would permit full discussion would bring about a result more in accordance with the rights of the parties.

As this court knows, this is but one of many controversies of a similar nature, and what this court says probably will affect the final outcome of *Bloomfield Village Drain District v. Keefe,* 119 Fed. (2) 157, which still remains unsettled. The Supreme Court of the United States has held petitions for reconsideration of its order denying certiorari for about three months, undoubtedly because it feels that it should not decide a question of local law of so much importance until this case is decided. We foresee perplexity both by that court and lower courts in this state which will have similar cases before them, to know whether emphasis on the term "storm sewer drain" is vital. This is only one of a few cases where that term is used. Does the decision mean that if the title of the improvement was merely Royal Oak No. 7 Drain, the *bona fide* holder would be protected? It is peculiarly important in the matter before the United States Supreme Court because five

issues of bonds are there involved, only one of them using the term "storm sewer drain." We respectfully urge the desirability of clarifying this point.

I.

SIGNIFICANCE OF TERM "STORM SEWER DRAIN" USED IN THE PROCEEDINGS AND BONDS

One opinion underscores the word "*sewer,*" the other "*storm sewer drain,*" and from this we draw the inference, and we believe others will do the same, that the court believes there was something indicative of wrongdoing on the part of the drain commissioner in planning to build an improvement which in his judgment warranted the name of "storm sewer drain." As the respondents made no claim that there was special significance to these words, and the briefs contain no argument on the subject, we feel that the court could not have been aware of the fact which we trust we can make clear, that the words "storm sewer" have an effect entirely opposite to that which the court has inferred. We hope that careful thought will convince the court that a storm sewer is purely a drainage device, carrying the implication that it is intended for storm water only, and not for sanitary sewage, and thus the name carries the implication that the improvement is to perform only that function which farm ditches are appropriate to perform, but to perform it in a more appropriate and efficient manner.

Confirmation of this point appears in the fact that this court approved the legality and complete jurisdictional compliance of another improvement, the East Clawson *Storm Sewer Drain,* in *Village of Clawson v. Van Wagoner,* 268 Mich. 148. Although the opinion does not show

the name of the improvement there under consideration, the name appears again and again in the records and briefs and the court, when it decided the case, must have known it. In the record of that case (p. 44) appears the explanation of the then commissioner, Governor Van Wagoner, whose competency as an engineer must be conceded. The record there says:

> "Murray D. Van Wagoner, drain commissioner at the time of the trial, is a graduate of the University of Michigan Engineering Department. The plaintiff conceded that he was a qualified sanitary engineer. He defined storm sewer as a sewer built for the purpose of carrying off from the ground, roofs and pavements, storm water, together with some underground water."

The common use of the term "sewer" to describe any underground passage or channel built in the form of a conduit to carry off unwanted water, is recognized in *Kennedy v. Dingman,* 272 Mich. 24, wherein the court said that the use of the term "sewer" by engineers in speaking of the project there under consideration had no significance. What did govern the court's opinion was the actual purpose of the thing. Was it built with the dominating purpose of ridding the land of water, or to enable residents to rid themselves of domestic sewage? The presumption of legality applicable to all official acts required the court, as was said in both the above decisions and others, to uphold the validity of drain proceedings until it was shown that the improvement was primarily a sanitary sewer.

So in every case which has come before this court touching on this question, since *Hankinson v. Deake,* 265 Mich. 1, there has been recognition that removal of storm water is the function of a drain, and that merely

constructing it in conduit form instead of an open ditch is of no consequence. The same was conceded at the hearing by counsel for *amici curiae.* When it is in a conduit form and is intended only for storm water removal, it necessarily is a storm sewer, as that term is commonly understood.

In the last previous case to come before the court, *Detroit Trust Co. v. Dingman,* 291 Mich. 170, this court said:

> "It is a well known fact that as land is developed for residential purposes, streets of an improved character are a necessity, and these cannot be preserved except special drainage is provided to care for surface water. It is equally well known that not infrequently this type of drainage is cared for by structures of an entirely different character than drains used to improve agricultural lands. Not infrequently drains designed to carry off volumes of surface water incidental to storms and melting snow are constructed with closed joints and laid deep in the ground, as in the instant case. This, however, does not deprive the structure of its character as a drain."

By "structures of an entirely different character than drains used to improve agricultural lands," the court could only have meant enclosed conduits, with inlets, catch basins, etc. for taking in surface water,—*i. e.* a storm sewer.

Dictionaries and standard engineering treatises confirm what the court said in *Kennedy v. Dingman,* that the word "sewer" alone is of no significance.

The Century Dictionary defines sewer as a "conduit or channel constructed, especially in a town or city, to carry off superfluous water, soil or other matter, a public drain." In *Bouvier Law Dictionary* it is defined

as a "subterranean passage for drainage, usually constructed and maintained by a municipal corporation." To an engineer, sewers are of three kinds,—sanitary, combined and storm. The court has said that it is not the function of the drain commissioner to provide sanitary sewers; that he may build combined sewers if the purpose is predominantly the removal of storm water. It could not very well say that he could not build a storm sewer, as that would deny him the very purpose of his office, the duty of providing for land drainage. In engineering texts we find the following:

In *Folwell—"Sewage,"* 10th Ed., p. 1: "In some cases house sewage is removed in one set of sewers and storm water in another set, the former being called *sanitary sewers* and the latter *storm sewers* or *drains.*" In *Hardenburgh—"Sewerage and Sewage Treatment,"* 1st Ed., p. 3: "A sewer that carries only storm water, drainage and other water from the surface of the street, but not domestic sewage or industrial wastes, is commonly known as a *storm sewer.* Such a conduit is often called a drain, but the term drain is preferably applied to a pipe in which both underground water and surface water are carried off by gravity."

All counsel in this case on both sides understood the meaning of these terms. They had the opportunity of examining numerous engineering witnesses in the various suits which resulted in the Circuit Court of Appeals opinion in *Bloomfield Village Drain District v. Keefe,* 119 Fed. (2) 157. The Master's report in the cases involving the Macomb County Drains, basing his opinion on a considerable amount of engineering testimony, says:

> "Considerable testimony was introduced as to the engineering principles and terminology underlying the construction of sewers and drains, a

knowledge of which is essential to the determination of the primary character of these projects. Fundamentally, a sewer differs from a drain in that the latter is designed to remove the surface and subsoil waters from a given area, while the purpose of the latter is to remove household and industrial wastes, including the effluent from laundry, bathtubs, washbowls, kitchen sinks, and toilets. The term 'drain' is sometimes used by engineers in the restricted sense of meaning a conduit designed to remove subsurface water only, for agricultural purposes, by infiltration. Before the development of modern plumbing in the latter part of the last century, the term 'sewer' had the same connotation which is now given to 'drain,' and is today frequently used by both engineers and laymen to embrace both meanings. There is a general tendency to refer loosely to any underground conduit as a sewer. The term 'storm sewer' has a definite technical connotation among engineers of meaning a conduit in an urban or semi-urban community designed to remove surface and subsurface waters only. The term 'combined sewer' refers to a conduit designed to receive both drainage and sewage. A 'sanitary' or 'separate' sewer is a conduit designed to receive sewage only. In urbanized communities, where underground systems for removing both classes of material are now the rule, engineering practice has varied between the construction of separate and combined systems, and there is a difference of opinion among engineers as to which is the generally preferable type."

No criticism of this statement was made in the case by any of the parties.

Therefore, we say, with all confidence, that anyone reading the proceedings, and anyone reading the bonds, instead of being charged with knowledge that the project

was to serve primarily the householders' need of an outlet for sanitary sewage, would be assured that all that was intended was a device to draw off and transport storm water, excluding therefrom all household sewage. Nowhere in the papers upon which the commissioner's jurisdiction is invoked, nor in his orders and determinations, can anyone find the slightest indication of an intent to make it other than a drainage project. Certainly nothing in the bonds tells a purchaser that sanitary sewage would ever be carried in it. Though this is permissible to some extent, as the court has said, the bonds, by using the term "storm sewer," carried the information that only storm water removal was the purpose of the work.

II.

EFFECT OF THE DECISION IN VILLAGE OF OAK PARK v. VAN WAGONER, 271 MICH. 450

The court feels that it is bound by its opinion in *Village of Oak Park v. Van Wagoner* to say that this project was outside the jurisdiction of the drain commissioner. A superficial reading of the opinion in that case might indicate that such was the court's decision, but we earnestly contend that this is not so, because the question presented to this court did not call upon it to pass upon that point.

It is true that in the lower court a decree could not be granted for the Village without proving to the satisfaction of the court that the project was not a drain. Circuit Judge Gillespie heard the case before *Hankinson v. Deake,* 265 Mich. 1 was decided. His only guides on the subject were decisions relating to the Southfield Storm Sewer and the Nile Mile Halfway Drain. He com-

pared the form of this drain to that of those improvements, and held it resembled them. In his decree he made the finding that this was a sanitary sewer (see appendix to our first brief, p. 65), although it is clear now that it was not. The circuit judges who decided *Hankinson v. Deake (supra)* and *Village of Clawson v. Van Wagoner,* 268 Mich. 148, followed the same reasoning, and were reversed.

If one supposes that the question of the legality of the improvement was before this court, it must strike anyone reading the opinion as peculiar that this court made no mention of its previous decisions in *Hankinson v. Deake* and *Village of Clawson v. Van Wagoner.* One would expect a discussion of points of contrast and an explanation of why a different conclusion was reached, since they had been decided but a short time previous.

The answer to the question as to why these decisions were not considered is in the fact that appellant, in bringing the Oak Park case to this court, did not challenge the finding of Judge Gillespie that the improvement was a sanitary sewer. On pages 4 and 5 of Relators' Reply to Brief of *Amici Curiae,* we print in full the assignments of error and questions appellants' brief raises. Nowhere is there complaint that the lower court erred in making the finding. All that is presented as a ground of error is that notwithstanding the construction of an unauthorized project, plaintiff was in no position to object, being barred by laches, acquiescence and failure to resort to certiorari.

The court's rules governing the appeal in this case quite definitely restricted the questions before the court to those covered by the assignments of error (preferably called grounds of appeal), and questions listed at the

beginning of appellants' brief. The rule then in effect was No. 59 (1931 Revision of the Rules), in which Section 3(d) provided for statement of grounds of appeal, saying:

> "Such reasons or grounds may be stated in the form heretofore employed in assignments of error, but no statement shall be deemed insufficient if it reasonably informs the opposite parties as to the nature of the error which appellant relies upon. If any of appellant's grounds involve the objection that the verdict, finding, judgment or decree is in any respect unsupported by the evidence, he shall specifically point out the part or feature of the case wherein the insufficiency is found. No other grounds or reasons shall be considered on the appeal except those so stated."

In a note to this rule contained in the publication thereof, entitled Michigan Court Rules Annotated, Professor Sunderland, Chairman of the Commission which formulated the rules, said:

> "Equity appeals are often called trials *de novo* on the record, but they are not such in fact. They are rather reviews of cases already tried, and they are disposed of by the supreme court in the light of the decisions below. The avowed purpose of the appellant is to establish the incorrectness of the decree, in whole or in part, and the appellee necessarily attempts to sustain its correctness. If the appeal is treated as a true review of the case upon the record, as to the law and the facts, the scope of the hearing in the supreme court will be restricted to such matters as the appellant really complains of, instead of involving everything in the case, whether the appellant complains of it or not.
>
> "Many states by statute require the same specifications of grounds in equity cases as in cases at

> law, and the practical need for it is exactly the same in both classes of cases. The burden upon the reviewing court will be definitely limited by such a practice, and the parties will be restricted from the beginning to those aspects or phases of the case which are called into question."

Rule 69 also contained the direction that appellant should preface his brief by a statement of the questions involved, and said that no point would be considered "which is not set forth in or necessarily suggested by the statement of questions involved." This case was presented to this court under a stipulation designed to take the place of the judge's certificate appearing on page 211 of the record, that the "record as prepared and presented contains all the evidence, either in substance or extended form, received upon the *issues pertinent to grounds of appeal filed herein.*" (Italics ours.)

Appellant did not specifically point out, as the rule required, that Judge Gillespie's finding was in any respect unsupported by the evidence; hence appellant could not argue error in this regard. Had such argument been made, appellee could have rightfully objected to its consideration, for it cannot be presumed that the record contained evidence on questions not raised by the grounds of appeal,—the stipulation indicating that not all evidence before the lower court was included. We cannot imagine that this court would have ignored its own rules and passed on a question not before it, when the record in the case disclosed that only those matters pertinent to the assignments of error were brought up. It ought to be presumed that this court abides by its own rules.

Decisions are not binding authorities as precedents upon propositions which should have been, but which

were not, considered. *Moinet v. Burnham Stoepel & Co.*, 143 Mich. 489.

This court, in the Oak Park case, did not pretend to pass upon the question whether Judge Gillespie correctly held that this project was a sanitary sewer, and could not under its rules have done so. It merely assumed that it was what the circuit judge found it to be, which the appellant did not question, and proceeded to a consideration of the questions appellant expressly raised.

It is superficial to regard a case as a precedent merely because it happened to involve the same improvement, unless it appears that the same question was presented. Precedents should be sought in cases where the same question was presented and the facts are similar, though other improvements were involved. Contrary to what has been said in the opinions, we believe that it would serve an extremely useful purpose to compare the facts in this structure, as disclosed in the opinions, with those in *Detroit Trust Co. v. Dingman,* 291 Mich. 170, the last previous case involving the question. It is right and just that the parties, the legal profession, and lower courts should be told why different conclusions are reached. The law governing both projects was the same. Both were underground conduits, capable of caring for both storm water and sanitary sewage. The presumption of legality attached to both. Why is the one in which the purpose of sanitary sewage removal played such an important factor that it was deemed necessary to build a sewage treatment plant, an improvement primarily for storm water removal, while the other, wherein such plant was deemed unnecessary, is primarily a sanitary sewer? If this was not a drain, what should the commissioner have done or left undone to bring it within his jurisdiction?

In all there have been so far ten cases since 1930 in which drain assessments were challenged on the ground that the project was a sewer, not a drain. In only four out of the ten was the circuit judge affirmed. Some thirty or more of these underground drainage projects have never been before this court. What rule have we which will enable a circuit judge to say that the primary purpose of each is drainage or sanitation? Must each be brought before this court before it can be known whether assessments and bonds are enforceable?

III.

ESTOPPEL BY BOND RECITALS. EFFECT OF THOMPSON v. VILLAGE OF MECOSTA, 127 MICH. 522, AND SIMILAR AUTHORITIES

Although the Oak Park case and this grow out of the same improvement, we respectfully submit that the controversy is different and the facts are different. A suit by a taxpayer to cancel his taxes is vastly different from a suit by a bondholder to secure what was promised him. The terms of the bonds, and the fact that they are *bona fide* held, were not before the court in the other action. The fact that a different issue is involved, and different facts applicable, was clearly recognized by this court in *Kinner v. Spencer,* 257 Mich. 142, where the court, though holding assessments void, refused to enjoin payments of the bonds because bondholders were not parties. This refusal necessarily was based upon the knowledge that irrespective of the court's conclusion of invalidity of taxes, on the record before it, bondholders might have rights based upon facts which they might be able to prove, or presumptions which they might call to their aid. It is as illogical to say that there is no difference between a taxpayer's suit and a bondholder's suit

as to say that there is no difference between a suit on a promissory note between the original parties and one between an endorsee and the maker. The fact of good faith holding makes a world of difference.

The two opinions make it obscure as to whether there is agreement in the court that *Thompson v. Village of Mecosta,* 127 Mich. 522, *Common Council v. Schlich,* 81 Mich. 405, *Schmid v. Village of Frankfort,* 131 Mich. 197, and *Bates v. City of Hastings,* 145 Mich. 574, are still the law, although the absence of any criticism of these decisions suggests that they are still considered sound expressions of the law, but that the court deems that they are inapplicable because the bonds refer to a "storm sewer drain." What has been before said in this brief as to the significance of this term seems to us to completely dispel the impression that this term was a badge of invalidity. Rather, it should be said that it emphasized the assurance of validity. Bondholders were assured by the state constitution of the power of the drain district to issue bonds for drainage purposes within the district. Certainly there was nothing in the constitution or drain law to indicate that drainage by means of a storm sewer was not permissible. The natural implication would be that any structure providing a water course for drainage purposes came within the scope of the commissioner's powers.

The broad statement contained in Judge Boyles' opinion that "a drain district or municipality is not estopped from denying liability of a bond issue on the ground of total lack of jurisdiction," is something that will interminably plague the court unless it is clarified. It all depends upon what is meant by total lack of jurisdiction. If it means absence of power to spend the proceeds in the manner intended at the time the bonds were issued, it is incorrect, so long as *Thompson v. Village of Me-*

costa and the three other cases cited with it, stand as the law. If it means absence of power by the municipality or drain district under all circumstances to issue bonds, it is correct but inapplicable to this case. There will be more cases coming before this court where some municipality claims the identical proposition claimed here, that it issued its bonds with the intent of spending the proceeds for some *ultra vires* purpose, and this statement, along with the other statement in the same opinion that "the validity of such issues depends upon the facts and circumstances under which they were issued" will be urged as authority for disregarding the effect of bond recitals.

We have cited many pertinent authorities to the effect that the first alternative meaning, the only one which could apply to these facts, is untenable. To emphasize it, we quote from a well reasoned case, *Caldwell v. Guardian Trust Co.*, 26 Fed. (2) 218, cited p. 22 of our first brief, in which bonds of an Arkansas drainage district were held valid, notwithstanding the fact that the drainage district only had authority to provide ditches and could not provide "sewers," as had been done. Without investigating the validity of the objection, the court held that the defense was precluded by bond recitals similar to those contained in these bonds. Quoting from an earlier case, it said:

> "Under the Constitution of the United States and the Constitution and Statutes of Arkansas, this road district and its officers had plenary authority to have obviated every one of the objections now under consideration, to have made the assessment, the levy of taxes, and all proceedings legal and valid, to have made its certificate in its bonds and mortgage true. It obtained the money of Otis & Company on this certificate that it had

> done so, and neither it nor the owners of the property in its district assessed, which it represented in its sale of these bonds, can now be permitted to defeat this suit of the purchasers by such defects in their proceedings as are now under consideration, on the ground that they made them illegal or invalid and their certificate false."

Total lack of power which can be successfully urged as a defense against municipal bonds *bona fide* held, and containing recitals such as these, is only that absence of power which results from no valid law under which the bonds of the municipality could under any circumstances be issued. All are expected to know the law; hence recitals of the existence of a law which, in fact, is nonexistent, are ineffective, but recitals of a state of facts which only those in control of the proceedings can know is a different matter.

We again call the court's attention to that well recognized authority cited p. 19 of our reply brief, *Hughes County v. Livingston,* 104 Fed. 306, wherein the court, in speaking of the rule forbidding denial of the truth of recitals, says:

> "If the legal effect of recitals is merely to declare that a state of facts or circumstances existed under which the municipality had the power to issue the bonds, this is a just and reasonable rule, and it is and it ought to be uniformly applied and enforced, because such facts are peculiarly within the knowledge of the municipality and its officers, and without the knowledge of the purchasers of the bonds. On the other hand, if the laws are such that there can be no facts or circumstances under which the municipality could have the power to issue the bonds, the purchasers are charged with knowledge of this state of the law."

In this case the respondents do not and cannot claim anything other than that there were peculiar facts and circumstances which made the exercise of the power to issue these bonds illegal. The peculiar fact claimed is that the project was not a drain because it was primarily intended as a sanitary sewer. Intention was a fact peculiarly within the knowledge of the district and its officers. The only information bond purchasers could have was that obtainable from the district and its officers. The bonds gave them the information. They could rely on it as truthful, and were not obliged to investigate further.

IV.

FAILURE OF OPINIONS TO DEAL WITH PROPOSITION THAT THE CERTIORARI PROVISION SHOULD BE GIVEN THE SAME CONSTRUCTION NOW AS EXISTED WHEN THE BONDS WERE ISSUED

We think that a decision in a case of so great importance ought to make known the court's opinion on every well considered point which would lead to an opposite conclusion. No one can deny that the drain law contained a provision which on its face forbade an attack upon the legality of the improvement constructed, and the taxes levied therefor, and that this had uniformly been interpreted by this court up to the time of the issuance of these bonds as forbidding collateral attack, whether such attack was grounded upon defects called irregularities or want of jurisdiction. *Stare decisis* was relied upon by bond purchasers. They believed that the court would adhere to the same interpretation, and if not, would apply the rule that an *ex post facto* change of interpretation could not affect their rights. The authorities are cited on pages 55, *et seq.* of our first brief, page

26 *et seq.* of the reply brief, and page 16 of the reply to brief of *amici curiae*. If the court is disposed to distinguish this case from *Township of Clarence v. Dickinson*, 151 Mich. 270, on the ground that due process would be violated by levying a tax by a drain commissioner for an improvement which it considers is primarily a sanitary sewer, is not an explanation in order to connect the due process clause with the situation? How is due process of law violated where a tribunal having power to take some action involving a deprivation of property, after notice and a fair hearing, strictly perform all conditions as to notice and fairness of hearing? Is it violated because the tribunal, after such notice and with the tacit consent of all concerned, takes some action which in strict law it should not have taken? If so, is not every judgment of a court open to the charge of invalidity on proof that the result reached was erroneous? We submit these questions deserve an answer.

CONCLUSION

We appreciate the fact that the court is reluctant to grant rehearings, because the time it can devote to any case is limited, but this is an unusual case. Oral argument which would have permitted the threshing out of the problems and a free discussion was sharply limited by court rule. People who innocently invested their money in bonds issued by a public agency are made to lose $150,000.00 and interest, and the agency is given a valuable and greatly needed improvement free of cost. If it is right and just that this result should occur, clear and well founded reasons should be given. Furthermore, the questions in this case are bound to recur again and again. Holders of other bonds of drain districts

cannot be expected to fold their hands and charge their investments to profit and loss. Drain commissioners are now encouraged to dispute every right of bondholders to the levy of taxes for the construction of any project which in any way resembles this one, and it may be expected that they will do so, for their interest lies in satisfying their constituents. A flood of litigation, with its attendant costs and disappointments, can be avoided if the court will recall its opinions, rehear the parties, and write a new opinion giving adequate and consistent reasons for the position taken. We believe if this is done, the court will be forced to a conclusion opposite to that which it has here given.

Respectfully submitted,

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